

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

MARVIN LEE HEIGHT,)
)
 Plaintiff,)
)
 v.)
)
 SAM OLENS et al.,)
)
 Defendants.)
)
)
 Case No. CV416-032

ORDER

After the Court recommended dismissing his 42 U.S.C. § 1983 complaint as an unauthorized second or successive 28 U.S.C. § 2254 petition (doc. 3), Marvin Height objected, pointing out (correctly) that claims like his¹ are actionable under § 1983. Doc. 8 at 4 (citing *Grayson v. King*, 460 F.3d 1328 (11th Cir. 2006)). The Court accordingly vacated its dismissal recommendation and indicated it would review the merits of his claims at a later time. Doc. 9. But it neglected to address Height's *in forma pauperis* (IFP) motion, which it denied as moot in the original recommendation. Doc. 3 at 1 n. 1.

¹ Height seeks to have DNA comparison testing performed. Doc. 8 at 2. That, he says, will "exclude him as the perpetrator of th[e] heinous crime" (murder) for which he stands convicted. *Id.*

Height's application demonstrates indigency, so the Court **GRANTS** him leave to proceed IFP. He is hereby advised that the procedures for filing and litigating prisoner civil rights suits in federal court were significantly changed by the Prison Litigation Reform Act (PLRA). PLRA requires all prisoners, even those who are allowed to proceed IFP, to pay the full filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). Prisoner litigants allowed to proceed IFP must pay an initial partial filing fee of 20 percent of the greater of the average monthly deposits to, or average monthly balance in, the prisoner's account for the 6-month period immediately preceding the filing of the complaint. Prison officials are then required to collect the balance of the filing fee by deducting 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). This payment shall be forwarded to the Clerk of Court "each time the amount in plaintiff's account exceeds \$10 until the full filing fees are paid." *Id.* The entire filing fee must be paid even if the suit is dismissed at the outset because it is frivolous, malicious, fails to state a claim, or seeks monetary damages against a defendant who is immune from such relief.

IT IS HEREBY ORDERED THAT:

(1) Plaintiff must furnish the enclosed **Prisoner Trust Fund Account Statement** to the trust (financial) officer of each prison where he has been confined for the past six months. The trust officer will complete and sign the form and return the form and supporting documents to plaintiff for submission to the Court. Two copies of the form are enclosed for this purpose.

(2) Plaintiff must sign and date the enclosed **Consent to Collection of Fees from Trust Account**. By signing this form, he gives his consent to the collection of the entire filing fee from his prison account in installments, in accordance with the PLRA's provisions.

(3) Plaintiff must return both the **Prisoner Trust Account Statement** and the **Consent to Collection of Fees from Trust Account** to the Clerk within thirty days of this Order.

Once plaintiff has complied with the conditions of this Order, the Court will review the Complaint to determine which, if any, claims are viable and which, if any, defendants should be served. If no response is timely received from plaintiff, the Court will presume that he desires to

have this case voluntarily dismissed and will dismiss this action without prejudice.

SO ORDERED, this 8th day of August, 2016.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

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PRISONER TRUST FUND ACCOUNT STATEMENT

Under the Prison Litigation Reform Act, a prisoner seeking to bring a civil action without prepayment of fees must obtain from the appropriate prison official a certified copy of the prisoner's trust account statement for the six-month period immediately preceding the filing of the complaint. The plaintiff in this case has been instructed by the Court to furnish this form to the trust officer of each institution where he has been confined for the last six months.

Please complete this form, attach the supporting ledger sheets, and return these documents to the prisoner for mailing to the Court.

DATE OF FILING COMPLAINT:

January 27, 2016
(to be completed by the clerk)

AVERAGE MONTHLY DEPOSITS during the six months prior to filing of the complaint: _____

AVERAGE MONTHLY BALANCE during the six months prior to filing of the complaint: _____

I certify that the above information accurately states the deposits and balances in the plaintiff's trust account for the period shown and that the attached ledger sheets are true copies of the account records maintained by this institution.

Signature of Authorized Officer of Institution

Date

Print or Type Name

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CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

As a condition to proceeding with this lawsuit, I hereby consent for the appropriate prison officials to withhold from my prison account and pay to the Court an initial partial filing fee equal to 20 percent of the greater of

- (a) the average monthly deposits to my account, or
- (b) the average monthly balance in my account

for the six-month period immediately preceding the filing of my complaint. I understand that I may not withdraw any monies from my account until this initial payment has been paid.

After the payment of any initial partial filing fee, I further consent for the appropriate prison officials to collect from my account on a continuing basis each month an amount equal to 20 percent of all deposits credited to my account. Each time the set aside amount reaches \$10.00, the trust officer shall forward the payment to the Clerk's office, United States District Court, P.O. Box 8286, Savannah, Georgia, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional costs which may be imposed by the Court.

Date: _____

Plaintiff's Signature: _____

Plaintiff's Prison No: _____